

Jonathan L. Flaxer
S. Preston Ricardo
GOLENBOCK EISEMAN ASSOR
BELL & PESKOE LLP
437 Madison Avenue
New York, New York 10022
T: 212-907-7300
E: jflaxer@golenbock.com
E: pricardo@golenbock.com

Alexander H. Schmidt
Malcolm T. Brown
WOLF HALDENSTEIN ADLER FREEMAN
& HERZ LLP
270 Madison Avenue
New York, NY 10016
T: 212-545-4600
E: schmidt@whafh.com
E: brown@whafh.com

Counsel for the Groman Plaintiffs

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
	:	
In re:	:	Chapter 11
MOTORS LIQUIDATION COMPANY, et al.,	:	Case No.: 09-50026 (REG)
f/k/a General Motors Corp., et al.,	:	Adv. Proc. No. 14-01929 (REG)
	:	
Debtors.	:	(Jointly Administered)
-----X		

**GROMAN PLAINTIFFS-APPELLANTS’
STATEMENT OF ISSUES ON APPEAL AND DESIGNATION OF
ADDITIONAL ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure, Plaintiffs-Appellants Dr. Steven Groman, Robin DeLuco, Elizabeth Y. Grumet, ABC Flooring, Inc., Marcus Sullivan, Katelyn Saxson, Amy C. Clinton, and Allison C. Clinton, individually and on behalf of all similarly situated persons (collectively, the “**Groman Appellants**”),¹ by and through their undersigned counsel, respectfully submit the following (i) statement of issues to be presented on appeal from the *Judgment*, dated June 1, 2015 [ECF No. 13177] (“**Judgment**”), and *Decision on Motion to Enforce Sale Order*, dated April 15, 2015 [ECF No. 13109]; and (ii) designation of additional items to be included in the record on appeal.

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Judgment.

Statement of Issues to be Presented on Appeal

The Groman Appellants incorporate by reference and present each of the issues presented for appeal in the Ignition Switch Plaintiffs-Appellants' Statement Of Issues To Be Presented On Appeal filed June 16, 2015 [ECF No. 13219, at 2-3]. In addition to those issues, the Groman Appellants present the following issues for appeal:

1. Did the Bankruptcy Court err by dismissing with prejudice the First Claim for Relief asserted in the Groman Appellants' First Amended Class Action Complaint, Adv. Proc. No. 14-01929 (REG), seeking a declaratory judgment that the "free and clear" provisions of the 363 Sale Order cannot be enforced by New GM against the Groman Appellants and other Class Members who did not receive constitutionally required notice of their ignition switch defect-related claims before entry of the 363 Sale Order?

2. Did the Bankruptcy Court err by denying the Groman Appellants' requests to conduct discovery pertaining to the Four Threshold Issues before those issues were briefed to the Court?

3. Did the Bankruptcy Court err by denying the Groman Appellants' request to conduct discovery pertaining to the Four Threshold Issues after those issues were briefed to the Court but before the Decision was rendered?

4. Did the Bankruptcy Court err by concluding that none of the disputed facts submitted by the Groman Appellants or other Identified Parties raised a genuine issue of material fact sufficient to preclude entry of judgment as a matter of law with respect to one or more of the Four Threshold Issues?

5. If prejudice is an essential element of establishing a due process violation arising from a failure to provide notice of entry of a 363 Sale Order, did the Decision and Judgment

themselves give rise to the required prejudice? Specifically, did the Bankruptcy Court's equitable mootness holding work to satisfy the prejudice element by having the effect of denying Plaintiffs any remedy whatsoever – even including satisfying their claims from present or future GUC Trust Assets, which was an available remedy for every similarly situated claimant whose right to receive notice was not violated in 2009?

6. Did the Bankruptcy Court issue an impermissible academic or advisory opinion by ruling on the legal standard for fraud on the court without permitting the parties to present any facts relevant to that issue, which may well have informed and altered the analysis of what the proper legal standard should be in this *sui generis* type of case?

7. If the Bankruptcy Court did not err by ruling on the legal standard for fraud on the court despite the lack of a factual record informing the analysis, did the Court adopt the correct legal standard?

Designation of Additional Items to be Included in the Record on Appeal

In addition to (i) each of the items previously designated by the Ignition Switch Appellants [ECF No. 13219, at 3-24]; and (ii) Item No. 7 previously designated in the *Elliott* Plaintiffs/Appellants' Statement Of The Issues And Designation Of Items To Be Included In The Record On Appeal, filed June 15, 2015 [ECF 13205, at 4] (which Item is styled therein as the "Groman Plaintiffs' Adversary Complaint Against Defendant General Motors LLC," filed April 21, 2014 [ECF No. 12619], the Groman Appellants submit the following designation of additional items to be included in the record on appeal (including any exhibit, annex, appendix or addendum thereto):

Item No.	ECF No.	Filing Date	Document
1	12622	04/21/2014	Letter to Hon. Robert E. Gerber regarding Motion Of General Motors LLC Pursuant To 11 U.S.C. §§ 105 And 363 To Enforce The Courts July 5, 2009 Sale Order And Injunction filed by Arthur Jay Steinberg on behalf of General Motors LLC
2	12626	04/22/2014	Letter in Response to ITEM NO. 1 filed by Jonathan L. Flaxer on behalf of Allison C. Clinton, Amy C. Clinton, Katelyn Saxson, Marcus Sullivan, ABC Flooring, Inc., Elizabeth Y. Grumet, Robin DeLuco, Steven Groman [hereafter the "Groman Plaintiffs"]
3	12652	04/24/2014	Letter to Hon. Robert E. Gerber regarding May 2, 2014 conference filed by Jonathan L. Flaxer on behalf of the Groman Plaintiffs
4	12706	05/22/2014	First Amended Class Action Complaint in Adv. Proceeding No. 14-01929, filed by Jonathan L. Flaxer on behalf of the Groman. Plaintiffs
5	12825	08/08/2014	Threshold Issues Letter filed by Jonathan L. Flaxer on behalf of the Groman Plaintiffs
6	12840	08/13/2014	Letter to Hon. Robert E. Gerber Responding to New GM's Threshold Letter, filed by Jonathan L. Flaxer on behalf of the Groman Plaintiffs
7	12848	08/15/2014	Letter to Hon. Robert E. Gerber Responding to Groman Plaintiffs' Letters, Dated August 8 and 13, 2014, Regarding Threshold Issues, filed by Arthur Jay Steinberg on behalf of General Motors LLC
8	13056	01/26/2015	Letter to Hon. Robert E. Gerber requesting to reserve right to address the Court at the Motion to Enforce Hearing filed by Jonathan L. Flaxer on behalf of the Groman Plaintiffs
9	13058	01/28/2015	Endorsed Order Signed on 1/28/2015 re the "Fraud on the Court" Issue addressed in the Groman Plaintiffs' Brief
10	13196	06/11/2015	Motion to Amend Findings Pursuant to FRBP 7052, for Reargument, to Alter or Amend the Judgment Pursuant to FRBP 9023, and for Relief from the Judgment filed by Gary Peller on behalf of Sharon Bledsoe

Dated: June 19, 2015
New York, New York

Respectfully submitted,

**GOLENBOCK EISEMAN ASSOR
BELL & PESKOE LLP**

By: /s/ Jonathan L. Flaxer
Jonathan L. Flaxer
S. Preston Ricardo
437 Madison Avenue
New York, New York 10022
Telephone: (212) 907-7327
Facsimile: (212) 754-0777
Email: jflaxer@golenbock.com
pricardo@golenbock.com

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**

By: /s/ Alexander H. Schmidt
Alexander H. Schmidt
Malcolm T. Brown
270 Madison Avenue
New York, NY 10016
Telephone: (212) 545-4600
Facsimile: (212) 545-4653
Email: schmidt@whafh.com
brown@whafh.com

Counsel for the Groman Plaintiffs